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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,328	10/24/2005	Jochen Ratjen	4208-18	8225

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NIXON & VANDERHYE, PC  
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ARLINGTON, VA 22203

EXAMINER
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KOHUT, DAVID M

ART UNIT	PAPER NUMBER
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3626

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08/24/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/549,328	<b>Applicant(s)</b> RATJEN ET AL.	
	<b>Examiner</b> David M. Kohut, Esq.	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/16/2005.3/12/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the application filed on 16 September 2005. Claims 1-28 are pending. The IDS statements filed 16 September 2005 and 12 March 2007 have been entered and considered.

### ***Priority***

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. As per claim 27, there is no indication of what is being claimed, whether it is a system or a method. In addition, the claim must describe how the system or method accomplishes its appropriate task so that one skilled in the art may practice the invention. For examination purposes, Examiner interprets this claim to be a method claim.

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6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. As per claim 1, Applicant states "...which device is arranged..." Examiner is not able to determine if the device referred to is the terminal device or the communication device. Applicant is requested to make the appropriate change.

9. Regarding claim 17, the phrase "or the like" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-7, 9-10, 12-17, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Conkright, U.S. Patent No. 5,850,344, reference A on the attached PTO-892.

12. As per claim 1, Conkright teaches a system for presenting information related to a medication of a patient (see abstract of Conkright) comprising a terminal device communicating with a wireless communication system (see column 4, lines 53-58 of

Conkright); and a medicament device including a medicament containing means arranged to hold a medicament (see column 5, lines 53-54 of Conkright); a dispensing mechanism arranged for dispensing medicament from the medicament containing means (see column 5, lines 61-62 of Conkright); means for obtaining information related to the medication of the patient (see column 4, lines 53-58 of Conkright); and a communication device for wireless communication to enable transmission of data related to said information from the medicament device to a terminal device, wherein said terminal device comprises means for receiving said data from said communication device and means for providing the user with a notification based on said information, and which device is arranged to present information related to the medication of the patient to a user (see column 4, lines 1-11 of Conkright).

13. As per claim 2, Conkright teaches the system of claim 1 as described above. Conkright further teaches the system wherein the terminal device is arranged to present information obtained from the medicament device by said means for obtaining information related to the medication and transferred to the terminal device from the medicament device via the communication device (see column 6, lines 4-10 of Conkright).

14. As per claim 3, Conkright teaches the system of claim 1 as described above. Conkright further teaches the system wherein the means for providing the user with a notification is selected from the group consisting of means for providing audible signals, visualizing means, vibration means, and light means (see column 5, lines 27-28 of Conkright).

15. As per claim 4, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the communication device is arranged for two-way transfer of data between the terminal device and the medicament device (see column 4, lines 1-3, and 53-58, and column 5, lines 53-65 of Konkright) and the terminal device comprises means for transmitting data from the terminal device to the communication device (see column 4, lines 53-58 of Konkright).

16. As per claim 5, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the terminal device is connected to a network computer system via said wireless communication system, thereby enabling a transfer of information related to the medication of the patient between the network computer system and the terminal device (see column 4, lines 52-60 of Konkright).

17. As per claim 6, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the means for obtaining information related to the dispensing is arranged to monitor the dispensing of medicament and is connected to the communication device to transfer data related to dispensing events (see column 6, lines 4-10 of Konkright).

18. As per claim 7, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the medicament device comprises a memory for storage of data related to the medication (see column 8, claim 8, lines 20-22 of Konkright).

19. As per claim 9, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the data is communicable between the

communication device and the terminal device in encrypted form (see column 7, lines 7-11 and 18-22 of Conkright).

20. As per claim 10, Conkright teaches the system of claim 1 as described above. Conkright further teaches the system wherein the communication device employs radiofrequency or optical signals (see column 4, lines 25-29 of Conkright).

21. As per claim 12, Conkright teaches the system of claim 1 as described above. Conkright further teaches the system wherein the medicament device is arranged to transfer data related to the medication of a patient to at least two terminal devices (see column 4, lines 43-51 of Conkright).

22. As per claim 13, Conkright teaches the system of claim 1 as described above. Conkright further teaches the system wherein said means for receiving data is arranged to receive information from at least two communication devices (see column 3, lines 64-67, and column 4, lines 1-4 of Conkright).

23. Method claims 14-16, 18-23, and 25-26 repeat the subject matter of claims 1-7, 9-10, and 12-13 as a series of steps rather than a set of "means-plus-function" elements. As the underlying system has been shown to be fully disclosed by the teachings of Conkright in the above rejection of claims 1-7, 9-10, and 12-13, it is readily apparent that the Conkright reference includes a method of using the system. As such, these limitations are rejected for the same reasons provided in the rejection of claims 1-7, 9-10, and 12-13 and incorporated herein.

24. As per claim 17, Conkright teaches the method of claim 14 as described above. Conkright further teaches the method wherein the step of notifying the user comprises

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the step of notifying the user by means of an SMS message, an MMS message, or the like (see column 4, lines 25-29 of Conkright).

25. As per claim 27, Conkright teaches a method for presenting information related to a medication of a patient (see abstract of Conkright) comprising a medicament device including a medicament containing means arranged to hold a medicament (see column 5, lines 53-54 of Conkright); a dispensing mechanism arranged for dispensing medicament from the medicament containing means (see column 5, lines 61-62 of Conkright); means for obtaining information related to the medication of the patient (see column 4, lines 53-58 of Conkright); and a communication device for wireless communication to enable transmission of data from the medicament device to the terminal device, to present information related to the medication of the patient to a user (see column 4, lines 1-11 of Conkright).

***Claim Rejections - 35 USC § 103***

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conkright, U.S. Patent No. 5,850,344, reference A on the attached PTO-892, in view of Rossmann, U.S. Patent No. 5,809,415, reference B on the attached PTO-892.

28. As per claim 8, Conkright teaches the system of claim 1 as described above. However, Conkright does not explicitly teach the system wherein the terminal device is

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a cellular telephone. Rossmann, however, does teach the system wherein the terminal device is a cellular telephone (see column 3, lines 46-56 of Rossmann). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Conkright. One of ordinary skill in the art would have been motivated to combine these features in order to increase the functionality of the system (see column 3, lines 52-56 of Rossmann).

29. Claims 11 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conkright, U.S. Patent No. 5,850,344, reference A on the attached PTO-892, in view of Hunter et al., U.S. Patent No. 5,608,171, reference C on the attached PTO-892.

30. As per claim 11, Conkright teaches the system of claim 1 as described above. However, Conkright does not explicitly teach the system wherein spread spectrum radiofrequencies are used. Hunter et al., however, does teach a system wherein a communication device communicates with the terminal device using spread spectrum radiofrequency signals (see column 4, lines 25-26 and 40-48 of Hunter et al.). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Conkright. One of ordinary skill in the art would have been motivated to combine these features to provide multiple users with a noise and interference resistant system for both voice and data communication (see column 4, lines 47-48 of Hunter et al.).

31. Method claim 24 repeats the subject matter of claim 11 as a series of steps rather than a set of "means-plus-function" elements. As the underlying system has been shown to be fully disclosed by the teachings of Conkright and Hunter et al. in the

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above rejection of claim 11, it is readily apparent that the Conkright and Hunter et al. references include a method of using the system. As such, these limitations are rejected for the same reasons provided in the rejection of claim 11 and incorporated herein.

32. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conkright, U.S. Patent No. 5,850,344, reference A on the attached PTO-892, in view of Danneels et al., U.S. Patent No. 6,272,472, reference D on the attached PTO-892.

33. As per claim 28, Conkright teaches the method of claim 14 as described above. However, Conkright does not explicitly teach providing these executable instructions on a machine-readable medium. Danneels et al., however, teaches a computer-implemented method realized as one or more programs on a computer (see column 2, lines 40-46.) In addition, Danneels et al. teaches that the programs are storable on a machine-readable medium such as a floppy disk or a CD-ROM (see column 2, lines 46-49 of Danneels et al.). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Conkright. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of distribution and installation and execution of the software on another computer (see column 7, lines 46-49 of Danneels et al.).

### ***Conclusion***

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Kohut, Esq. whose telephone number is 571-

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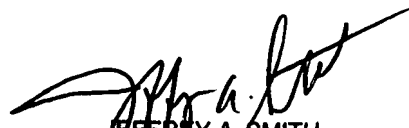
270-1369. The examiner can normally be reached on M-Th 730-5 w/1st Fri off. 2nd Fri 730-4.

35. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

36. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DMK

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8/13/2007

  
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